

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN MILIAN and U.S. POSTAL SERVICE,
POST OFFICE, McAllen, TX

*Docket No. 03-104; Submitted on the Record;
Issued May 2, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of his federal duties.

On August 3, 2002 appellant, then a 40-year-old supervisor, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that, on August 2, 2002, while in the performance of his federal duties, he was involved in a motor vehicle accident that resulted in a contusion to his face and eye, loosened crowns and bridge in his mouth and caused injuries to his left hand, back, chest and neck.

In a support of his claim, appellant submitted an August 6, 2002 duty status report (Form CA-17) with an illegible signature that provided no diagnosis but included medical restrictions regarding walking, climbing, pushing and pulling.

In an August 15, 2002 letter, the Office of Workers' Compensation Programs informed appellant that he needed to submit additional evidence in order to establish his claim. No further evidence was received.¹ In a September 17, 2002 decision, the Office denied appellant's claim finding that the incident occurred as alleged but the evidence of record failed to support that a medical condition resulted from the incident.

The Board finds that appellant has not established that he sustained an injury in the performance of his federal duties. An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act,

¹ The Board notes that appellant submitted new medical evidence subsequent to the Office's decision. However, the Board cannot consider that evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷

In the present case, appellant established that the August 2, 2002 motor vehicle accident occurred as alleged. However, appellant failed to submit sufficient medical evidence to establish a personal injury caused by the accident. Specifically, the evidence did not establish, with rationale, a causal relationship between appellant’s medical condition and the accepted employment incident. The only medical evidence at the time of the Office decision was an August 6, 2002 duty status report that contained no diagnosis and illegible signature. Appellant has not met his burden of proof under the Act.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁵ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

The September 17, 2002 decision by the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 2, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member